



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 96 of 2013**

Preetam Sonwani S/o Shambhudas Sonwani Aged About 20 Years Vill.
Chandijob, Post Bortalab, Tah. Dongargarh, District Rajnandgaon
Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Health & Family Welfare Deptt., Mantralay, Naya Raipur Chhattisgarh
2. Superintendent of Police Rajnandgaon District : Rajnandgaon, Chhattisgarh
3. Dr. Ashok Tamrakar Block Medical Officer, Dongargarh, Dist. Rajnandgaon Chhattisgarh
4. Santram Verma Sector Parivakshak Dongargarh, Dist. Rajnandgaon , District : Rajnandgaon, Chhattisgarh
5. Smt. A Ganvir Singh Paryavasak Samudayik Health Centre, Dongargarh, Dist. Rajnandgaon , District : Rajnandgaon, Chhattisgarh

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For the petitioner	:	Mr. Parag Kotecha, Advocate.
For the State/R-1 & R-2	:	Mr. Sudeep Verma, Dy. G.A.
For respondent No.3	:	Mr. Shashank Thakur, Advocate
For respondents 4 & 5	:	Mr. Abhishek Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****25.06.2019**

Heard.

1. The present petition is filed by one Preetam Sonwani who claims to be an unmarried person. It is stated that he was subjected to vasectomy



operation (sterilization) though he had gone for treatment to the hospital for stomach ache. The facts as have been narrated by the petitioner are that on 05.11.2011, the petitioner was suffering from stomach pain, so he went to Government hospital Dongargarh for treatment. It is contended that certain signatures were taken on the forms and he was directed to sit. Thereafter certain injections were administered on both of his hands, upon which, he became unconscious and when he gained consciousness he was given an amount of Rs.1100/- along-with a certificate and was asked to go back. Subsequently when the certificate was shown to some of the villagers, he came to know that operation of vasectomy (*Nasbandi*) was performed on him. The petitioner claims that he was unmarried and young man of 20 years of age and had never opted to give consent to undergo vasectomy operation and fraud was played on him by the respondents. The petitioner being aggrieved made certain complaints to the police about the illegal act done by the respondents but nothing had transpired at the end of police.

2. Later on, the State Officials conducted enquiry wherein it was found that the erring doctors were responsible for performing vasectomy operation on the petitioner and the penalties were proposed. The further contention is that during the enquiry by the State, it would reveal that despite service of several notices on the concerned officers/doctors, they chose not to turn up and hence on the basis of available documents i.e., register and papers of hospital, it was found that the respondents had committed negligence in performance of



their duties. Therefore, the instant petition was filed with the following relief (s) :

“10. Reliefs sought :

In view of the facts and grounds mentioned above, the petitioner humbly and most respectfully prays for the following reliefs in the ends of justice :

(I) The Hon'ble Court may kindly be pleased to issue direction to respondent No.1 & 2 to initiate the departmental enquiry and criminal proceedings against the respondents no.3 to 5.

(II) The Hon'ble Court may kindly be pleased to direct respondent No.1 to pay compensation to the tune of Rs.5,00,000/- to the petitioner.

(III) Any other relief which this Hon'ble Court deems fit and proper under the facts and circumstances of the case and in the interest of justice and cost of the petition may be awarded in favour of the petitioner and compensation for illegal harassment may be awarded to the petitioner.”

3. In the return, the State contended that the petitioner had signed necessary papers before the vasectomy operation was conducted and after undergoing the operation, the petitioner has received an amount of Rs.1100/- as a whole. It is stated that the vasectomy operation was performed on the petitioner on the basis of consent given by the petitioner, therefore, the petitioner is not entitled for any relief(s).

4. Learned counsel for the petitioner would submit that the petitioner do not dispute the fact that he has signed certain papers. It is contended



that the papers were got signed only for the treatment of stomach pain, but instead he was subjected to vasectomy operation for which he never consented. It is further contended that the petitioner is an unmarried boy of 20 years of age, therefore, in all practical purposes, he would not have consented for vasectomy sterilization. Learned counsel further referred to the documents Annexure P-4 & Annexure P-5 in respect of an internal enquiry made by the State and would submit that the documents of the State would show that the State itself found that the doctors and other medical staff were responsible for such vasectomy operation performed on the petitioner and penalties were proposed. He further submits that under the facts and circumstances when the State has found the guilt and negligence of respondents to be proved, it cannot go back from its own documents and the findings so rendered in respect of the act of erring officials. Therefore the petitioner is entitled to get necessary relief.

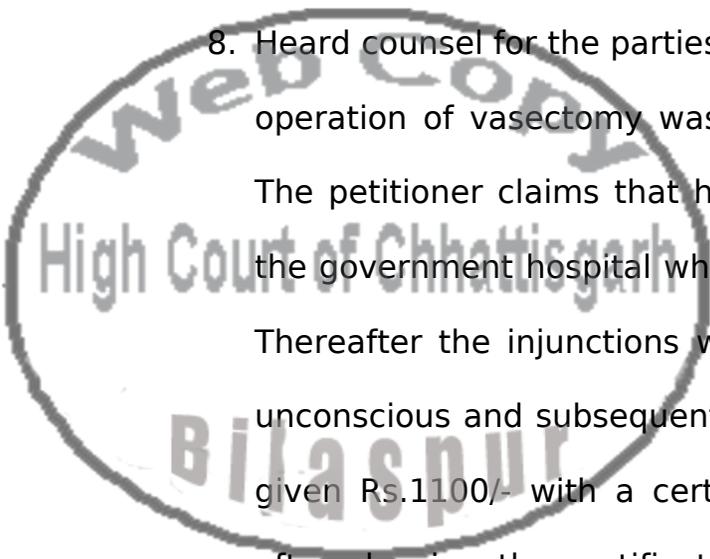
5. Mr. Sudeep Verma, learned State Counsel would submit that the documents so filed by the State cannot be disputed and if it has been found proved in enquiry that the negligence has been committed on the part of doctors who has wrongly conducted the vasectomy operation on the person of petitioner, the State cannot be held responsible for such act.
6. Mr. Shashank Thakur, learned counsel for respondent No.3 vehemently opposes the submission and would submit that the State cannot make any submission against the return filed by it and would further submit that the documents would show that the petitioner himself has



consented to undergo the vasectomy operation. Therefore, after he was operated upon and paid the amount to him, he cannot take 'U' turn and claim the relief.

7. Mr. Abhishek Sharma, learned counsel appearing for respondents 4 & 5 submits that at the relevant time, neither the respondents were present nor they were in any way engaged in the said act of vasectomy operation, therefore, they have wrongly been impleaded in the present petition.

8. Heard counsel for the parties and perused the document. The fact that operation of vasectomy was done to the petitioner is not in dispute. The petitioner claims that he went for treatment of stomach pain to the government hospital wherein he was asked to sign certain papers. Thereafter the injections were administered to him and he became unconscious and subsequently when he gained consciousness he was given Rs.1100/- with a certificate and went back to the village and after showing the certificate to the villagers, then only he came to know about such operation. Admittedly, the incident took place on 26th Sept. 2011, for which, the police report was given on 17.11.2011. The Letter/Memorandum (Annexure P-4) is dated 27.11.2012 addressed to the Sub-Divisional Officer by the Tahsildar and Annexure P-5 is dated 04.05.2012 addressed to the Collector, Rajnandgaon by the Office of SDM, Dongargarh. A perusal thereof shows that certain enquiry was conducted by the State. Be that as it may, it appears that as per the Annexure P-4 and P-5, the in-house enquiry was made by the State.





9. Annexure P-4 i.e., report dated 27.11.2012 made by the Tahsildar Dongargarh purports that the Tahsildar recorded the statement of the petitioner. Thereafter, the Tahsildar went to the Hospital to record the statement of respondent No.3 who, at the relevant time, was the Block Medical Officer, namely, Dr. Ashok Tamrakar. Despite the fact that he was available on 11.11.2011, he avoided to give any statement and he got the statements recorded of his staff. The statement of one staff member Sant Ram Verma was also recorded. He stated that he was present in the Nasbandi Camp on 26.09.2011. At that time, a person came and asked for the people of Bortalab which was informed to Supervisor of that area Smt. A.Ganvir. Thereafter, he has deposed that he do not know anything. The statement of Smt. A. Ganvir was recorded. She has stated that she advised the petitioner not to undergo the Vasectomy operation as it was stated that he was father of only one child but he was adamant to undergo the vasectomy. The statement of Data Entry Operator Manik Das Manikpuri was also recorded wherein he has deposed that the petitioner was paid Rs.1100/- after the operation. He further stated that special incentive of Rs.3000/- is given to the persons who intend to undergo operation after one child, therefore, the case of petitioner was sent to Rajnandgaon as he was having only one child. Thereafter, the Block Medical Officer, Dongargarh though was summoned, but did not come to give his statement. Likewise, Geeta Thakur of Bortalab who was working under Block Medical Officer was also asked to appear along-with witness Ram Singh of Peeperkela and they also failed to appear.



10. For the sake of ready reference, the report of the Tahsildar is reproduced herein below:

5. खंड चिकित्सा अधिकारी डोंगरगढ़ उको दिनांक 22.11.2011 को न्यायालय में उपस्थित होकर ब्यान देनेन बाबत आहूत किया गया। वे नोटिस तामिल के बाद भी अनुपस्थित रहे हैं।
6. इनके अधीनस्थ कर्मचारी गीता ठाकुर बोरतलाव को आहूत किया गया, वे अनुपस्थित रहे है। गवाह रामसिंग पीपरखारकला को आहूत किया गया वे भी अनुपस्थित रहे वे दिनों व्यक्ति खण्ड चिकित्सा अधिकारी के दबाव में है।
7. स्वास्थ्य विभाग के क्षेत्रीय कर्मचारी द्वारा प्रति वर्ष लक्ष्य दंपत्ति की सूची तैयार करते है। जिसमें प्रार्थी का नाम दर्ज नहीं है। ओ पी डी रजिस्टर में भी प्रार्थी का नाम दर्ज नहीं है। इनके द्वारा घोर लापरवाही किया गया है।
8. खण्ड चिकित्सा अधिकारी द्वारा अस्पताल में संधारित रजिस्टर की फोटो कापी पेश किया जिसमें उक्त दिनांक को आपरेशन कराने वाले का नाम दर्ज है। जिसके क्रमांक 10 पर नाम दर्ज है। तथा राशि प्राप्त करना बताया गया है। सभी कार्यवाही खण्ड चिकित्सा अधिकारी डॉ ताम्रकार के निर्देश में होना बताया गया है।
9. खण्ड चिकित्सा अधिकारी ने लिखित में बताया है कि नसबंदी के पद्धति एन एस व्ही टी में नस को पुनः खोला जा सकता है।
10. अविवाहित युवक के नसबंदी में डा0 ताम्रकार बी0एम0ओ0 डोंगरगढ़, श्री संतराम वर्मा सेक्टर पर्यवेक्षक सामुदायिक स्वास्थ्य केन्द्र डोंगरगढ़ द्वारा लापरवाही बरती गई है। अतः जांच प्रतिवेदन सादर सम्प्रेषित।

11. Likewise Annexure P-5 is a letter written by the SDM, Dongargarh who also evaluated the report of the Tahsildar and endorsed the same view and recommended for disciplinary action against the erring officials. The relevant part of Annexure P-5 dated 04.02.2012 is also reproduced hereunder:

तहसीलदार के रिपोर्ट अनुसार, जाँच के दौरान, खंड चिकित्सा अधिकारी डॉ0 ताम्रकार, कर्मचारी गीता ठाकुर, गवाह रामसिंग, को नोटिस जारी किया गया परन्तु वे साक्ष्य हेतु उपस्थित नहीं हुए। प्रतिवेदन अनुसार, स्वास्थ्य विभाग



के क्षेत्रीय कर्मचारी द्वारा प्रतिवर्ष लक्ष्य दंपत्ति की सूची तैयार किया जाता है, कि सूची पीड़ित व्यक्ति का नाम दर्ज नहीं होना, ओ.पी.डी. रजिस्टर में भी नाम दर्ज नहीं होना परन्तु खंड चिकित्सा अधिकारी द्वारा अस्पताल में संधारित रजिस्टर की छायाप्रति पेश किया गया है जिसमें ऑपरेशन कराने वालों की सूची क्रमांक-10 में पीड़ित व्यक्ति का नाम दर्ज होना तथा राशि प्राप्त करना दर्शित है।

तहसीलदार ने अविवाहित युवक श्री प्रीतम सोनवानी आ0-स्व0 शंभुदास सोनवानी साहिन-बोरतलाब तहसील-डोंगरगढ़ के नसबंदी कराये जाने की घटना हेतु खंड चिकित्सा अधिकारी डॉ0 अशोक ताम्रकार, सेक्टर पर्यवेक्षक श्री संतराम वर्मा, एवं पर्यवेक्षक श्रीमती ए0 गनवीर सिंह, सामुदायिक स्वास्थ्य केन्द्र डोंगरगढ़ द्वारा लापरवाही बरते जाने के कारण जिम्मेदार माना है। तहसीलदार, डोंगरगढ़ के प्रतिवेदन से सहमत होते हुए जिम्मेदार अधिकारी/कर्मचारियों के विरुद्ध अनुशासनात्मक कार्यवाही किये जाने की अनुशंसा सहित प्रतिवेदन सादर सम्प्रेषित है।

12. The SDM, Dongargarh vide his letter (Annexure P-5) addressed Collector, Rajnandgaon came to conclusion that negligence has been committed on the part of the persons. In this regard, the averments have been made by the writ petitioner at para 8.7 of the petition. In reply to such averments, no specific reply has been given by the State. Only simple denial has been made. Therefore, the findings rendered by the State Officials in Annexure P-4 & Annexure P-5 stand finalized as the averments made therein were not refuted by the respondents.

13. The Doctor who chose not to appear before the Enquiry Committee has not filed any return before this Court. However, during the course of arguments they sought to rely on documents filed by the State by stating that the petitioner himself has signed the document for vasectomy operation, therefore, he cannot take 'U' turn. There is a serious fall out in between the stand of the State and Respondent No.3. The conduct of respondent 3 would show that he chose not to appear



before the enquiry committee and despite the fact that this petition was filed long back and several dates have passed, no return has been filed on his behalf to clarify his stand. The petitioner does not say that he has not signed the papers but it is the case of the petitioner that when he went to the hospital, some papers were got signed and thereafter certain injunctions were administered and he became unconscious. Subsequently when he gained consciousness he found that he was subjected to Vasectomy operation for which he never agreed. This fact has been proved by the State itself in its initial enquiry conducted by the Tahsildar and then fortified by the SDM vide Annexures P-4 & P-5. Subsequently the part of negligence as has been projected by the petitioner was accepted by the State in its enquiry. It is also obvious that a person who is unmarried would not consent for the operation of Vasectomy (Nasbandi) as it would be against the human nature and highly improbable.

14. **Universal Declaration of Human Rights, 1948** - In the year 1948 as many as 48 countries including India participated in international convention wherein they voted in favour of the Declaration and accordingly the Universal Declaration was adopted by the General Assembly on 10th December, 1948 vide Resolution 217. Further, in the convention held in Paris, the declaration was proclaimed by the United Nations General Assembly on 10th December 1948 (General Assembly Resolution 217-A) as a common standard of achievements for all people and all nations. It sets out for the first time, fundamental human rights to be universally protected. Articles 5, 12 & 16 of the Resolution are relevant and quoted here-in-below :



“Article 5 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 12 -No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16 – (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”

15. The *International Covenant on Economic, Social and Cultural Rights* adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16th December, 1966. Further the *International Covenant on Civil and Political Rights* was adopted by India and other countries to follow the General Assembly Resolution 2200A (XXI) of 16 December 1966. Articles 7 and Article 17 of the Resolution thereof reads as under :

“Article 7 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation.

Article 17 - No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

16. Reading of the aforesaid articles relating to human rights which are universally proclaimed and adopted by large number of countries



including India which has also consented the resolution of the United Nations General Assembly would show that the the right to marry and found a family by a person is also held to be a human right coupled with the fact that no one should be subjected to torture or cruel treatment. The right to marry and found a family necessarily relates to the subject in issue. Therefore, when a person is subjected to sterilization against his/her consent, it would amount to violation of international human rights. Among the fundamental rights, Governments are required to respect, protect and fulfill the right to be free from torture and cruel, inhuman or degrading the treatment as also the right to the highest attainable standard of physical and mental health. The United Nations Human Rights Committee recognizes forced sterilization as a violation of the right to be free from torture and cruelty, inhuman or degrading treatment or punishment. Therefore, the forced and coerced sterilization can be so severe and discriminatory as to meet the international legal definition of torture. Torture occurs whenever severe pain or suffering is intentionally inflicted on a person for an improper purpose and with the participation, consent, or acquiescence of the State. Even if there is no improper purpose or intent to cause severe pain and suffering, forced and coerced sterilization can still be considered “cruel and inhuman” or “degrading” treatment.

17. The Supreme Court in various cases has viewed that the right to life as enshrined in Article 21 of the Constitution of India includes the right to health and medical treatment. The right to life would be meaningless unless medical care is assured to a sick person. Article 19(1) provides



six fundamental freedoms to all its citizens which can be restricted only on grounds mentioned in clauses (2) to (6) of Article 19 of the Constitution. These fundamental freedoms can be effectively enjoyed only if a person has healthy life to live with dignity and free from any kind of disease or exploitation which further ensured by the mandate of Article 21 of the Constitution. When breach of this right occurs, the health care provider will be held liable for negligence. The State would be vicariously liable for the damages payable on account of negligence of its doctors and other staff. Applying this principle, the Supreme Court held the State of Haryana liable for negligence of the doctor in a Government Hospital in performance of sterilization operation resulting in birth of an unwanted child (*State of Haryana vs. Santra AIR 2000 SC 1888 = (2000) 5 SCC 182*).

18. In the instant case, the sterilization carried out on the person of petitioner may not be intentional but can be out of sheer negligence which is fortified by the State Enquiry Committees. In a rural hospital or health center, a doctor to fill up certain achievement data cannot be careless and avoid minimum enquiry particulars before such act is performed on a person. In the instant case, the in-house enquiry of the State Committees reveals and points out the negligence of the doctors in performing such act. The petitioner who was unmarried on the said date was sterilized without his consent thereby his right to marry and found a family along-with his privacy was breached or interfered.
19. In view of the foregoing discussion, the petition is allowed. The State is directed to pay a compensation of Rs.2,50,000/- to the petitioner and



thereafter the State would be at liberty to recover the same from the erring officials.

Sd/-
(Goutam Bhaduri)
Judge

Rao

